8-13-2012

State v. Posey Appellant's Brief Dckt. 39899

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	
	)	
V.	)	SUPREME COURT NO. 39899
	)	
VALARIE LYNN POSEY,	)	
	)	
Defendant/Appellant.	)	
	)	

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE CARL B. KERRICK
District Judge

JOHN M. ADAMS
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STATEMENT OF THE CASE

I. Nature of the case.

Valarie Posey (hereinafter "Posey"), appeals from the District Court's Appellate Opinion and Order affirming the magistrate's denial of Posey's Motion to Suppress on the charge of driving under the influence, excessive alcohol concentration. R., pp. 175-183. In particular, Posey challenges the District Court's finding that the community caretaking function doctrine is applicable in the context of entry into a home. The District Court made certain conclusions that are not supported by the factual record. Finally, the district Court erred in finding that the officer's actions in this case were a reasonable exercise of his community caretaking function.

II. Course of the Proceedings Below.

On March 24, 2011, Coeur d'Alene Police Officer Shane Avriett arrested the Defendant, Valarie Lynn Posey, on the charges of driving under the influence with excessive alcohol concentration, Idaho Code § 18-8004C; failure to give immediate notice of accident, Idaho Code § 49-1305; open container of alcohol, Idaho Code § 23-505; and driving with an invalid license, Idaho Code § 49-301. R., pp. 7-9 and 25-27. On April 28, 2011, the State filed an Amended Criminal Complaint, clarifying that the driving under the influence charge was enhanced to allege an excessive alcohol concentration, and to replace the charge of failure to give immediate notice of accident with the charge of accident involving damage to vehicle, Idaho Code § 49-1301. R., pp. 39-40.

On May 2, 2011 Posey filed a Motion to Suppress any and all evidence gathered her, "including all statements made by the defendant, the observations made by the officers of the

defendant before, during and after the stop, and any evidence seized subsequent to the stop," alleging that the warrantless entry into defendant's home by the officers was unlawful and without legal justification, in violation of the Constitution and laws of the United States and the State of Idaho. R., pp. 41-42. An evidentiary hearing on Posey's Motion to Suppress was held on May 27, 2011. After hearing the evidence, the magistrate denied Posey's Motion to Suppress. R., pp. 54-55.

On June 6, 2011, Posey entered a Conditional Guilty Plea to the driving under the influence charge, and a guilty plea to the charge of accident involving damage to vehicle. R., pp. 57-58. The charges of open container of alcohol and driving with an invalid license were dismissed. R., pp. 61-62. After obtaining a substance abuse evaluation, Posey was sentenced on July 28, 2011. R., pp. 68-69. On August 15, 2011, Posey filed a timely Notice of Appeal of the magistrate's denial of her Motion to Suppress. R., pp. 73-75.

Oral argument was held via telephone hearing before the Honorable Carl Kerrick, District Judge, on February 29, 2012. R., pp. 172-173. During oral argument, defense counsel agreed that the defense did not take issue with any of the magistrate's factual findings. App. Tr. p. 12, L. 4-8.[1] On March 23, 2012, Judge Kerrick entered an Appellate Opinion and Order, affirming the magistrate's denial of Posey's Motion to Suppress. R., pp. 175-183. On April 24, 2012, Posey filed a timely Notice of Appeal to the Idaho Supreme Court. R., pp. 188-191.

[1] Transcript of oral argument on appeal to District Court held on February 29, 2012.

III. Statement of the Facts.

At the beginning of the hearing, the parties stipulated that there was no warrant in this case. Tr. p. 1, L. 20 – 21.[2] Shane Avriett of the Coeur d'Alene Police Department was the only witness who testified at the suppression hearing. According to his testimony, on March 24, 2011, Officer Avriett was a patrol officer assigned to the Traffic Division with the City of Coeur d'Alene Police Department. Tr. p. 3, L. 4 – 5. He was on duty on that day at approximately 4:00 in the afternoon, when he responded to an accident on 4th Street, just south of I-90, where 4th and 3rd separate by the Dave Smith car dealership. Tr. p. 4, L. 23 – 25; p. 5, L. 1 – 5. When Officer Avriett arrived on scene, he saw a red car blocking northbound traffic. Tr. p. 5, L. 10 – 11. The car had significant damage on the driver's side front fender and door area, and the airbags had deployed. Tr. p. 5, L. 12 – 13; p. 6, L. 5. Officer Avriett also saw at the scene what he believed to be a gray or silver SUV with damage. Tr. p. 5, 13 – 14. There was a young girl at the scene of a "verbal age" of 12, who had blood coming out of her mouth. Tr. p. 5, L. 19 – 21.

The driver of the red car was not at the scene. Tr. p. 6, L. 12 – 13. An Officer Morgan told Officer Avriett that witnesses had seen the driver leave on foot, westbound. Tr. p. 6, L. 15 – 17. Dispatch relayed to Officer Avriett that they were on the phone with a reporting party who was following the female driver of the red car, as she traveled westbound on Homestead. Tr. p. 7, L. 5 – 9. After receiving that information from dispatch, Officer Avriett responded to that area. Tr. p. 7, L. 10 – 12. The reporting party flagged down Officer Avriett. Tr. p. 8, L. 4 – 5.

[2] Transcript of hearing on Posey's Motion to Suppress held on May 27, 2011.

The reporting party told Officer Avriett that he had followed the female driver, who had been the sole occupant, from the crash, down Homestead. Tr. p. 8, L. 8 – 9. The reporting party thought that the female appeared to be "completely out of it", and she was bleeding from the face. Tr. p. 8, L. 9 – 13. The female had reportedly gone into the house on the corner of Homestead and Government [Way]. Tr. p. 8, L. 13 – 18. Officer Avriett thought that the information that he received from the reporting party might have been "piecemeal", rather than given to him all at one time. Tr. p. 8, L. 24 – 25; p. 9, L. 1 – 2. The reporting party remained at the corner of Homestead and Government Way the entire time Officer Avriett was investigating the accident. Tr. p. 9, L. 12 – 15. Officer Avriett believed he had gone back and contacted the reporting party probably two or three times. Tr. p. 9, L. 8 – 9.

Officer Avriett wanted to get the person to come out of the house. Tr. p. 9, L. 6 – 7. He tried knocking on the door, but there was no answer. Tr. p. 9, L. 18 – 19. Officer Avriett thought he had knocked on the door a few times. Tr. p. 9, L. 25. He did not hear any movement inside, nor hear any voices. Tr. p. 10, L. 2 – 5. Officer Avriett contacted a supervisor by radio, and obtained approval to "breach" the door. Tr. p. 10, L. 8; L. 19. Officer Avriett was uncertain whether he asked to speak to a supervisor prior to the reporting party telling him that Posey had scratches on her face and was bleeding. Tr. p. 18, L. 6 – 10. Officer Avriett attempted to kick the door open, "maybe six times", but he was not able to "breach" the door by foot. Tr. p. 10, L. 20 – 22. He didn't remember whether he announced who he was when he knocked on the door, but Officer Avriett testified that he announced, "Coeur d'Alene Police, open the door" before he started kicking the door. Tr. p. 11, L. 1 – 6.

When he was unable to kick the front door of the house open, Officer Avriett borrowed a large sledge hammer from fire personnel who were on scene. Tr. p. 12, L. 3 – 5. Before using the sledge hammer, Officer Avriett saw that the door knob of the front door was "being turned, attempted to be turned". Tr. p. 12, L. 12 – 13. He also observed that the door jamb was split. Tr. p. 12, L. 13 – 16. Officer Avriett had damaged the door jamb trying to get in the door. Tr. p. 18, L. 18 – 21; L. 25; P. 19, L. 1 – 2. Officer Avriett "wasn't sure if the person was either trying to barricade the door or trying to open it themselves". Tr. p. 12, L. 20 – 21. When asked by the State why he made the decision to tell whomever to "step away from the door", rather than "can you open the door" or something else, Officer Avriett referred to past experiences when people want to hide from the police. Tr. p. 13, L. 8 – 10; L. 14 – 15.

Officer Avriett was able to break open the front door of the house with the sledge hammer. Tr. p. 13, L. 19 – 21. The first thing he saw after breaking open the door was an elderly gentleman. Tr. p. 13, L. 25; p. 14, L. 1. He asked the elderly gentleman "where the female was that had come in the house", and the elderly gentleman pointed behind the door that Officer Avriett had just "broke in". Tr. p. 14, L. 3 – 5. The female, later identified as Posey, was holding a washcloth against her face. Tr. p. 14, L. 10. Officer Avriett told Posey to go outside, but she didn't immediately move. Tr. p. 14, L. 19. Posey told Officer Avriett, "I'm fine, I'm fine" when he was ordering Posey to go outside and see medical. Tr. p. 19, L. 9 – 11. Posey declined medical attention. Tr. p. 15, L. 13 – 14.

On cross-examination, Officer Avriett admitted that Posey had allegedly walked several blocks from the scene of the crash to the home on Government Way under her own power. Tr. p.

16, L. 7 – 10. At the time that Officer Avriett went to the residence on Government Way to try to make contact with Posey, he was aware that she had allegedly committed the crime of leaving the scene of an injury accident. Tr. p. 16, L. 13 – 17. Officer Avriett believed he had the right to enter the home if Posey were injured, but admitted that he did not have the right to enter the home if she was hiding from police. Tr. p. 17, L. 8 – 18. Officer Avriett admitted that before he forcibly entered the home, he did not know whether Posey was injured so badly that she wasn't thinking straight. Tr. p. 17, 22 – 25; p. 18, L. 1 – 2.

During the cross-examination of Officer Avriett, the video recording of the incident was entered into evidence and played for the court. The audio portion of the video that was picked up in the recording of the suppression hearing reveals the following. Officer Avriett states, "Central 312 said you have a supervisor on Channel 2." Then there are banging sounds. Tr. p. 25, L. 19 – 20. It was *after* that when the reporting party told Officer Avriett, "She's not okay. (inaudible) . . . her face was cut up and bleeding." Tr. p. 26, L. 13 – 14. Officer Avriett asked the reporting party "Did she appear intoxicated or just . . .", and the reporting party replied, "I couldn't tell." Tr. p. 26, L. 19 – 20.

Just before breaking the front door of the house open, Officer Avriett stated, "Coeur d'Alene Police. Open the door. Last warning." Tr. p. 27, L. 9. "Step back away from the door. Step back away from the door. (inaudible) . . . I'm gonna hit the door. Step back." Tr. p. 27, L. 15 – 16. After making contact with Posey inside the house, Officer Avriett said to her, "Step outside for me with medical. Go ahead Valerie [sic]. Go." Tr. p. 27, L. 19 – 20. "Step out there with (inaudible) . . . go (inaudible) . . . How much did you have to drink today, Valerie [sic]?"

Tr. p. 27, L. 24 – 25. Posey told Officer Avriett, "I'm -- I'm fine." Tr. p. 28, L. 4. Officer Avriett replied, "No. Come over here. Why don't you step over here for me? Come on, Valerie [sic]." Tr. p. 28, L. 5 – 6.

After hearing the evidence, the magistrate found that the entry into the home was made without a search warrant, and that "[m]ost of the exceptions to the search warrant requirement are not met here". Tr. p. 45, L. 12 – 14. The magistrate further found that "[t]he only one that really does match, in my mind, is the community caretaking function." Tr. p. 45, L. 18 – 19. The magistrate referred to *State v. Wixom*, 130 Idaho 752 (1997), and quoted that opinion as stating

> The constitutional standard is whether the intrusive action of the police was reasonable in view of all of the surrounding circumstances. Reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen.
>
> Tr. p. 46, L. 12 – 17.

The magistrate also made reference to *State v. Godwin*, 121 Idaho 491 (1992), quoting, "In order for the community caretaking function analysis to apply an officer must possess a subjective belief that an individual is in need of immediate assistance. Although the officer may harbor at least an expectation of detecting or finding evidence of a crime." Tr. p. 46, L. 19 – 23.

The magistrate found in the current case:

> clearly there's an accident involved. Clearly people are injured. We have the 12 year old that's injured there at the scene. We've got airbags deployed. Severe damage to the red car.

> The driver of the vehicle is gone. A reporting [sic] following them over to another location, after the person tried to get the car doing [sic] again, even though the car is clearly not drivable at that point. Has to take the keys away from the person. Describes the person to the officer as being "out of it", bleeding from the face.
>
> So, you know, the officer, I think, reasonably, under these circumstances, has a belief that the individual is need [sic] of immediate assistance. Okay.

Tr. p. 47, L. 16 – 25; p. 48, L. 1 –2.

As to the use of a sledge hammer to gain entry into the house, the magistrate found that "[t]hat is way at the end of what might be considered reasonable in going into somebody's house." Tr. p. 48, L. 5 – 6. Ultimately, the magistrate found that under the circumstances of this case, "I'm constrained to find that this is an appropriate use of the community caretaking function," and denied Posey's Motion to Suppress.

In its Appellate Opinion and Order (hereinafter "Opinion"), the District Court made the following conclusions while acting in its appellate capacity, from a factual record made in the magistrate court:

> "Further, [the officer] had contact with the reporting party which established the driver was acting in a manner indicating she needed medical care for injuries she had sustained in the collision." R., p. 180.
>
> "In this case, a bystander was concerned about the Appellant's welfare to the extent that he followed her several blocks and explained to officers that she sustained injuries in the crash." R., p. 181.

The District Court responded to Posey's argument that the Idaho case law which addresses the community caretaking function is limited to instances where vehicles are searched by stating that "[t]his argument ignores the fact that the circumstances in the case at hand arose as the result of a collision between two vehicles, one of which the Appellant was driving." R., p. 181.

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. Is there an applicable exception to the warrant requirement that justified the police officer's entry into Posey's home?

2. If the entry into Posey's home was unlawful, should the evidence obtained thereby be excluded?

ARGUMENT

I. Standard of Review.

When reviewing a decision of the district court acting in its appellate capacity, the Supreme Court will review the record and the magistrate court's decision independently of, but with due regard for, the district court's decision. *Losser v. Bradstreet*, 145 Idaho 670, 672 (2008). When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. *State v. Page*, 140 Idaho 841, 843 (2004).

II. There is No Applicable Exception to the Warrant Requirement that Justified the Police Officer's Entry into Posey's Home.

A. Applicable Fourth Amendment Jurisprudence.

The Fourth Amendment to the United States Constitution guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Ramirez,* 145 Idaho 886, 888 (Ct. App. 2008); *State v. Salois,* 144 Idaho 344, 347 (Ct. App. 2007); *State v. Cerino,* 141 Idaho 736, 737 (Ct. App. 2005). Its purpose is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions.' " *Delaware v. Prouse,* 440 U.S. 648, 653-54 (1979) (quoting *Marshall v. Barlows, Inc.,* 436 U.S. 307, 312 (1978)). The sanctity and privacy of a home is protected by the Fourth Amendment's prohibition against unreasonable searches and seizures. Physical entry of the home is the chief evil against

which the wording of the Fourth Amendment is directed. *United States v. United States Dist. Court for Eastern Dist. of Mich.*, 407 U.S. 297, 313 (1972). At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. *Payton v. New York*, 445 U.S. 573, 589–90 (1980). Warrantless searches and seizures inside a home are presumptively unreasonable. *Id.* at 586. The state bears the burden to show that a warrantless search either fell within one of these well-recognized exceptions to the warrant requirement or was otherwise reasonable under the circumstances. *State v. Araiza*, 147 Idaho 371, 374 (Ct. App. 2009). Therefore, absent circumstances that fit within a recognized exception to the warrant requirement, evidence acquired through the warrantless search of a home must be suppressed. *State v. McBaine*, 144 Idaho 130, 133 (Ct. App. 2007).

B. Community Caretaking Function.

i. History of Community Caretaking Function.

A citizen is not considered to be "seized" by a law enforcement officer who is performing an officer's community caretaking function. The community caretaking function involves the duty of police to help individuals officers believe are in need of immediate assistance. *State v. Schmidt*, 137 Idaho 301, 303 (Ct. App. 2002). The term "community caretaking functions" was first used by the United States Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433 (1973). In *Cady*, after the defendant crashed a Thunderbird automobile, a passing motorist took him to a tavern in town, and the defendant called the local police. *Id.* 413 U.S. at 435-36. The police picked up the defendant, noticed he appeared intoxicated, and drove him to the scene of the

accident. *Id.* at 436. The defendant informed the police that he was a Chicago police officer. *Id.* The officers believed that regulations required Chicago police officers to carry their service revolver at all times, the defendant did not have his revolver on him, and the officers could not find it after searching the front seat and the glove compartment of the Thunderbird. *Id.* The Thunderbird was towed to a privately owned garage where no police guard was posted. *Id.* The defendant was eventually arrested but taken to a local hospital where he lapsed into a coma. *Id.* Later that night, officers went to the tow yard to search for the missing revolver and, in the process, found evidence linking the defendant to a murder. *Id.* at 436-37.

The issue for the *Cady* Court's determination was whether the officers' warrantless search of the Thunderbird violated the defendant's Fourth Amendment Right to be free from the unreasonable search and seizure of his car. *Id.* at 442. The Court began its analysis by reviewing its own precedent regarding searches of automobiles, in contrast to searches of homes. *Id.* at 439-40 (citing *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States*, 267 U.S. 132 (1925); *Cooper v. California*, 386 U.S. 58 (1967)). Recognizing that the Fourth Amendment did not apply to the States through the Fourteenth Amendment until *Mapp v. Ohio*, 367 U.S. 643 (1961), was decided twelve years earlier, the Court noted that most of its precedent on the subject of searches and seizures dealt with the actions of the federal government. *Cady*, 413 U.S. at 440-41. The Court then provided the following analysis:

> As a result of our federal system of government, however, state and local police officers, unlike federal officers, have much more contact with vehicles for reasons related to the operation of vehicles themselves. All States require vehicles to be registered and operators to be licensed. States and localities have

> enacted extensive and detailed codes regulating the condition and manner in which motor vehicles may be operated on public streets and highways.
>
> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as **community caretaking functions**, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Id. at 441.

The *Cady* Court further discussed the distinction made between automobiles and homes in its Fourth Amendment analysis:

> Although the original justification advanced for treating automobiles differently from houses, insofar as warrantless searches of automobiles by federal officers was concerned, was the vagrant and mobile nature of the former, [citations omitted] warrantless searches of vehicles by state officers have been sustained in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent. [Citations omitted.] The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband.

Id. at 441-442.

An Idaho appellate court first applied the community caretaking function in *Matter of Clayton*, 113 Idaho 817 (1988). In *Clayton*, during the early morning hours a police officer, observed a vehicle in a parking lot adjacent to a bar. *Id.* at 818. The vehicle's engine was running and the headlights were on, and an individual, later identified as Clayton, was sitting in the driver's seat behind the steering wheel, with his head slumped forward. *Id.* The officer

decided to approach the vehicle to determine whether the person was in need of medical attention, asleep or intoxicated. *Id.* The officer opened the driver's side door, reached in, turned the motor off, and took possession of the keys. *Id.* He then attempted to arouse Clayton by speaking to him loudly and shaking him. *Id.* After several minutes, Clayton awoke and began talking, but the officer was unable to distinguish any coherent speech. *Id.* Based on the location of the vehicle, the time of day and Clayton's conduct, the officer suspected intoxication. *Id.* Clayton was arrested for DUI. *Id.*

The *Clayton* Court first noted that the officer acted reasonably in investigating the situation. *Id.* The Court found that when the officer observed the vehicle with its motor running, lights on, and the driver slumped forward, he had a duty as a police officer to investigate, pursuant to *Cady*:

> Here, at 1:30 in the morning, the vehicle was in a parking lot with its lights on and motor running, with the driver slumped forward. Tested upon practical considerations of everyday life on which reasonable persons act, this situation falls outside the boundaries of normal conduct. The driver could have been hurt or sick, and in need of medical attention. Officer Moser acted prudently and satisfied his caretaking function when investigating the vehicle.
>
> *Clayton*, 113 Idaho at 818.

From its inception, a principal element of the community caretaking function was that the officer's activity must be one that is *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. *Cady v. Dombrowski*, 413 U.S. at 441; *Matter of Clayton*, 113 Idaho at 818; *State v. McAfee*, 116 Idaho 1007, 1009 (Ct. App. 1989). In later cases, the Idaho Court of Appeals included in its analysis in some, but not

all, cases involving the community caretaking function, that in order for the community caretaking function analysis to apply, an officer must possess a subjective belief that an individual is in need of immediate assistance, although the officer may harbor at least an expectation of detecting or finding evidence of a crime. *State v.* Deccio, 136 Idaho 442, 445 (Ct. App. 2001) (includes the additional language); *State v. Schmidt*, 137 Idaho at 304 (includes the additional language); *State v. Maddox*, 137 Idaho 821 (Ct. App. 2002) (does not include the additional language); *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006) (does not include the additional language).

It appears that inconsistent standards are being applied to, on the one hand, required that "the officer's activity must be one that is *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute", and on the other hand provide that "an officer must possess a subjective belief that an individual is in need of immediate assistance, although the officer may harbor at least an expectation of detecting or finding evidence of a crime." There is no constitutionally viable support for this deviation from the standard first set forth in *Cady*. Idaho appellate courts are not free to interpret the Fourth Amendment to the United States Constitution more strictly than the United States Supreme Court does. *State v. Guzman*, 112 Idaho 981, 988-89 (1992); *State v. Thompson*, 114 Idaho 746, 748 (1988). This case presents the Court with an opportunity to refine and define when an officer can, consistently with the Fourth Amendment, seize an individual when there is no suspicion of criminal activity.

ii. Standards for the Community Caretaking Function in Idaho.

In addition to the standards set forth above, in analyzing community caretaking function cases, Idaho courts have adopted a totality of the circumstances test. *State v. Wixom*, 130 Idaho at 754 (1997). The constitutional standard is whether the intrusive action of the police was reasonable in view of all the surrounding circumstances. *Id.* Reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. *State v. Godwin*, 121 Idaho 491, 495 (1992). Community caretaking cannot be invoked to justify the detention of a citizen that is prompted merely by an officer's curiosity, a subjective but unsubstantiated suspicion of criminal activity, or even an unwarranted concern that help might be needed. *State v. Cutler*, 143 Idaho at 302; *State v. Maddox*, 137 Idaho at 824-25.

iii. The Community Caretaking Function does not Apply to a Police Officer's Entry into a Home.

As far back as *Cady*, *supra*, the United States Supreme Court has made a distinction between automobiles and homes in its Fourth Amendment analysis. In *South Dakota v. Opperman*, 428 U.S. 364 (1976), the Court pointed out that warrantless examinations of automobiles have been upheld in circumstances in which a search of a home or office would not. *Id.* at 367. The expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. *Id.* The expectation of privacy as to automobiles is further diminished by the obviously public nature of automobile travel. *Id.* at 368.

The undersigned was unable to find any Idaho appellate opinions which applied the community caretaking function doctrine to a police officer's entry into a home. All of the Idaho appellate court opinions applying the community caretaking function exception involved officers' encounters with drivers of motor vehicles. In *State v. Barrett*, 138 Idaho 290 (Ct. App. 2003), the trial court denied Barrett's suppression motion, finding that the officer's entry of Barrett's home was lawful under both the exigent circumstances exception to the Fourth Amendment warrant requirement and the officers' community caretaking function. Upon appeal to the Idaho Court of Appeals, however, the appellate court made its ruling based only upon the exigent circumstances exception to the warrant requirement.

The District Court's opinion makes reference to Posey's argument that the community caretaking function is limited to instances where vehicles are searched. The District Court found that "[t]his argument ignores the fact that the circumstances in the case at hand arose as the result of a collision between two vehicles." R., p. 181. However, the reasoning of the District Court is in error, because even though Posey had been driving a motor vehicle earlier, which resulted in a collision with another vehicle, the officer's seizure of Posey took place later at her home, not at the crash scene. What matters is where the seizure took place. The fact that Posey had been involved in a motor vehicle collision earlier is irrelevant to the issue of whether the Officer Avriett violated Posey's constitutional right to be free from unreasonable searches and seizures when he forcibly entered Posey's home. Officer Avriett's entry cannot be justified as an exercise of his community caretaking function, because community caretaking function is not applicable to an officer's entry into a person's home.

iv. The Officer's Entry into Posey's Home was not a Reasonable Exercise of the Community Caretaking Function.

Even if the community caretaking function is applicable to an officer's entry into a person's home, in the current case, Officer Avriett's warrantless entry into Posey's home was not a reasonable exercise of his community caretaking function. The information available to Officer Avriett before he entered the home was that Ms. Posey had left the scene of a two-vehicle crash on foot. Before forcibly entering the home, Officer Avriett was aware that Posey had allegedly committed the offense of leaving the scene of an injury accident. The unnamed reporting party told Officer Avriett that Ms. Posey was "completely out of it", and she was bleeding from the face. However, Ms. Posey was able to walk away from the scene on her own, and walked several blocks to get to her home on the corner of Homestead and Government Way.

Officer Avriett claimed that he forced entry at the residence with a sledge hammer to check on the Posey's welfare. However, Officer Avriett also testified that when he saw the door knob moving, he "wasn't sure if the person was either trying to barricade the door or trying to open it themselves." When asked by the State why he made the decision to tell whomever to "step away from the door", rather than "can you open the door" or something else, Officer Avriett referred to past experiences when people want to hide from the police. Before forcibly entering the home, Officer Avriett asked the reporting party if Posey was "intoxicated". After breaking into the home, one of the first things Officer Avriett said to Posey was, '[h]ow much did you have to drink today, Valerie [sic]?" Officer Avriett's knowledge that Posey had left the scene of the crash, which would constitute a crime; his concern that someone may have been

barricading the front door to attempt to hide from police; his apparent familiarity with Posey; and his questions about drinking and intoxication; belie his claim that he went to the house merely out of concern for Posey's welfare and to render medical assistance to her. Under the circumstances of this case, when Officer Avriett broke open the front door of Posey's home with a sledge hammer, he clearly did so in an effort to apprehend a criminal suspect, rather than in performance of his community caretaking function.

In making its findings, the District Court stated:

> "Further, [the officer] had contact with the reporting party which established the driver was acting in a manner indicating she needed medical care for injuries she had sustained in the collision." R., p. 180.
>
> "In this case, a bystander was concerned about the Appellant's welfare to the extent that he followed her several blocks and explained to officers that she sustained injuries in the crash." R., p. 181.

The factual record made in this case in the magistrate court does not support these conclusions made by the District Court, and to the extent that the District Court's decision was in reliance upon these unsupported conclusions, the District Court was in error.

Officer Avriett's conduct of breaking open Posey's front door with a sledge hammer to gain entry was not reasonable. His actions go way beyond the police conduct that the Idaho appellate courts have found to be reasonable in other cases involving the community caretaking function: *Matter of Clayton*, 113 Idaho 817 (1988), (contact with defendant reasonable after police officer observed defendant's car parked in a parking lot adjacent to a bar with the engine running, the headlights on, and the defendant was sitting in the driver's seat behind the steering wheel, with his head slumped forward); *State v. Godwin*, 121 Idaho 491 (1992), (police officer's

brief detention of a driver to run a status check on the driver's license after making a valid, lawful contact with the driver was reasonable); *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), (defendant's extreme lethargy, the manner his vehicle was parked, and the presence of the handgun led officer to reasonably conclude there was "something else wrong"). Therefore, Officer Avriett's warrantless entry into the home was unlawful, and Ms. Posey was unlawfully seized as a result.

III. Since the Entry into Posey's Home was Unlawful, the Evidence Obtained Thereby Should be Excluded.

A. Fourth Amendment to the United States Constitution.

Evidence obtained in violation of the Fourth Amendment generally may not be used as evidence against the victim of illegal government action. *State v. Bishop*, 146 Idaho 804, 810-11 (2009); *State v. Page,* 140 Idaho 841, 846 (2004); *see also Wong Sun v. United States,* 371 U.S. 471, 485 (1963). This rule, known as the exclusionary rule, applies to evidence obtained directly from the illegal government action and to evidence discovered through the exploitation of the original illegality, or the fruit of the poisonous tree. *State v. Bishop*, 146 Idaho at 811; *State v. Page,* 140 Idaho at 846; *Wong Sun v. United States,* 371 U.S. at 487-88. The test is " 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of [the original] illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " *Wong Sun v. United States,* 371 U.S. at 488 (quoting MAGUIRE, EVIDENCE OF GUILT 221 (1959)). When a defendant moves to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the

government carries the burden of proving that the search or seizure in question was reasonable. *State v. Bishop*, 146 Idaho at 811.

In *State v. Curl*, 125 Idaho 224 (1993), a police officer entered an apartment building to serve an arrest warrant on a second floor resident. *Id.* at 224. The officer observed Curl exit from another apartment on the second floor, followed by a puff of white smoke emanating from the interior of the apartment. *Id.* The officer believed that the odor coming from that apartment was that of freshly burning marijuana. *Id.* Curl walked down the hallway toward the officer. *Id.* When Curl approached within ten feet and saw the officer, he stopped abruptly, hesitated for a moment, spun around, and ran back to the apartment from which he had left. *Id.* The officer ran after Curl, identified himself as a police officer, paused briefly, pushed the door open, and entered the apartment. *Id.* The officer seized certain evidence and cited Curl with possession of marijuana and possession of drug paraphernalia. *Id.*

Curl filed a motion to suppress all evidence obtained after the officer entered the apartment, contending that the entry was illegal. *Id.* at 224-225. Upon finding that the warrantless entry into the apartment violated the Fourth Amendment, the Idaho Supreme Court ruled that "all fruits derived from that poisonous tree must be suppressed." *Id.* at 227.

In *State v. Wren*, 115 Idaho 618 (Ct. App. 1989), police officers responded to a neighborhood complaint of noise at Wren's residence. *Id.* at 619. Finding Wren in his back yard, the officers told him to "quiet down" or he would receive a citation for disturbing the peace. *Id.* Wren walked into his house, but a few moments later he reappeared on the back porch. *Id.* After directing some abusive language toward the officers, he began to reenter the

house. *Id.* The officers pursued him. *Id.* The officers followed Wren into the house, pushing their way through the door and chasing him into the living room. *Id.* There they subdued him by force and told him, possibly for the first time, that he was under arrest. *Id.* During a search incident to the arrest, the officers found a small amount of marijuana in Wren's shirt pocket. *Id.*

The Idaho Court of Appeals determined that the factual record was insufficient to rule on the constitutional issue presented in *Wren*, and remanded the case to the trial court to make additional findings of fact. *Id.* at 626. However, the court did find that "if Wren's arrest is ultimately found to be invalid . . . the marijuana in Wren's shirt pocket, found during a search incident to the arrest, would be excludible," citing *Wong Sun, supra. Id.* at 627.

B. Article I, § 17 of the Idaho Constitution.

The Idaho Constitution affords greater protection than the Fourth Amendment for the exclusion of illegally-obtained evidence. Article I, § 17 of the Idaho Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

This section of the Idaho Constitution is substantially similar to the Fourth Amendment to the U.S. Constitution, which states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The purpose behind Article I, § 17 of the Idaho Constitution parallels the statement of purpose given by the United States Supreme Court: "The Fourth Amendment and Article I § 17 are designed to protect a person's legitimate expectation of privacy, which 'society is prepared to recognize as reasonable'." *State v. Thompson,* 114 Idaho 746, 749 (1988) (citing *Rakas v. Illinois,* 439 U.S. 128, 143 (1978) (citations omitted)). "The similarity of language and purpose, however, does not require this Court to follow United States Supreme Court precedent in interpreting our own constitution." *State v. Donato*, 135 Idaho 469, 471 (2001). State courts are at liberty to find within the provisions of their constitutions greater protection than is afforded under the federal constitution as interpreted by the United States Supreme Court. *Id*; *State v. Guzman*, 122 Idaho 981, 987 (1992). Article I § 17 of the Idaho Constitution affords greater protection than the Fourth Amendment to the United States Constitution based upon the long-standing jurisprudence of the Idaho appellate courts, the uniqueness of the State of Idaho, and the uniqueness of the Idaho Constitution. *State v. Donato*, 135 Idaho at 472. "Idaho's Constitution stands on its own, and although we may look to the rulings of the federal courts on the United States constitution for guidance in interpreting our own state constitutional guarantees, we interpret a separate and in many respects independent constitution." *Hellar v. Cenarrusa*, 106 Idaho 586, 590 (1984).

Idaho's exclusionary rule was first applied in *State v. Arregui*, 44 Idaho 43 (1927), 34 years before the federal exclusionary rule was applied to the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). The exclusionary rule in Idaho became based wholly upon the state constitution. *State v. Guzman*, 122 Idaho at 991.

In *Guzman*, the Idaho Supreme Court rejected a good-faith exception to the exclusionary rule:

> Although we do not doubt and do not challenge the United States Supreme Court's power to define the parameters of fourth amendment protection against unreasonable searches and seizures, it is equally important that the protections accorded under our state constitution not be diminished by a permanently pervading adoption of the federal good-faith exception.

122 Idaho at 988-89.

In *Guzman*, the Court discussed the gradual chipping-away of the exclusionary rule at the federal level, and made the distinction between the federal and Idaho constitutions on the rationale for the exclusionary rule:

> The *Mapp* Court reiterated that the *Weeks* [*Weeks v. United States,* 232 U.S. 383 (1914)] exclusionary rule was mandated by the constitution in order to provide a remedy to those who have had their fourth amendment rights violated. 367 U.S. at 648. Additionally, the Court noted that the exclusionary rule had three other purposes: 1) that the rule would prevent the use of evidence which was "tantamount" to a coerced confession, 367 U.S. at 656; 2) the rule would serve as a deterrent to fourth amendment violations, 367 U.S. at 658; and 3) the rule would protect judicial integrity. 367 U.S. at 659.
>
> In the 1970's, the United States Supreme Court started to rewrite its own exclusionary rule history. In doing so, it began to deny that the *Weeks–Mapp* purposes behind the exclusionary rule had ever existed and instead asserted that the only purpose which ever justified the exclusionary rule was the deterrence rationale.
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> . . .
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> However, in Idaho this Court has held that the exclusionary rule does more than merely deter police misconduct. In *Arregui,* we said that the exclusionary rule was a constitutionally mandated remedy for illegal searches and seizures. In *State v. Rauch,* 99 Idaho 586, 593 (1978), we said that evidence illegally seized must be suppressed because to admit it would constitute an independent constitutional violation by the court in addition to the violation at the time of the illegal search.

> In *State v. LePage,* 102 Idaho 387, 391–92,(1981), *cert. denied* 454 U.S. 1057 (1982), while we recognized that the deterrence of police misconduct was a purpose, we also recognized that judicial integrity mandated the exclusionary rule. *See also State v. Johnson,* 110 Idaho 516, 524–26 (1986) (recognizing the different purposes of the state exclusionary rule).
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> . . .
>
> In sum, the United States Supreme Court has abandoned the original purposes of the exclusionary rule as announced in *Weeks* and adopted by this Court in *Arregui,* in that the federal system has clearly repudiated any purpose behind the exclusionary rule other than that of a deterrent to illegal police behavior. Thus, the change in federal law has provided an impetus for a return by this Court to exclusive state analysis. We believe that the exclusionary rule should be applied in order to: 1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity.
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> 122 Idaho at 991 – 993.

In the present case, if not for the illegal entry into Posey's home, Officer Avriett would not have obtained evidence that Posey had been under the influence of alcohol at the time of the motor vehicle crash. The evidence that Posey was under the influence was obtained by exploitation of the illegal entry into Posey's home and must be suppressed under the Fourth Amendment exclusionary rule. However, if not suppressible under the Fourth Amendment, the evidence must still be suppressed pursuant to the greater protections afforded under Article I, § 17 of the Idaho Constitution, due to the uniquely strict protection and recognition of private property rights and the sanctity of the privacy of the home that we recognize in Idaho.

CONCLUSION

Officer Avriett's forced entry into Posey's home was unlawful, because there is no exception to the warrant requirement that applies in this case. There is no Idaho appellate court opinion that has applied the community caretaking function to a police officer's entry into a home, in contrast to a police officer contacting the driver of a motor vehicle. Officer Avriett's extreme act of breaking open the front door of Posey's home with a sledge hammer was not a reasonable exercise of the community caretaking function. Officer Avriett did not break in to the home out of concern for Posey's welfare. Officer Avriett was clearly attempting to apprehend Posey, whom he suspected of driving under the influence of alcohol. Before entering Posey's home, however, Officer Avriett lacked probable cause to arrest Posey for the offense of driving under the influence of alcohol. Because the evidence that Posey was under the influence of alcohol was obtained as a direct result of exploitation of the illegal entry into her home, any evidence against Posey that was obtained after Officer Avriett broke into her home must be suppressed, pursuant to the exclusionary rule.

DATED this 9th day of August, 2012.

JOHN M. ADAMS
KOOTENAI COUNTY PUBLIC DEFENDER

BY: _____
J. LYNN BROOKS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I hereby certify that I have this 9 day of August, 2012, served true and correct copies of the attached APPELLANT'S BRIEF via interoffice mail or as otherwise indicated upon the parties as follows:

X	Coeur d'Alene City Prosecuting Attorney	via interoffice mail
X	Lawrence G. Wasden Attorney General P.O.Box 83720 Boise, Idaho 83720-0010	[X] First Class Mail [ ] Certified Mail [ ] Facsimile (208) 854-8074
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Alisha J. Strange